IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.172 OF 2006

IN

SUMMARY SUIT NO.3535 OF 2005

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Vijaya Bank ...Plaintiff

v/s.

Sainath L. Kulkarni & Anr. ...Defendants

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Mr.S.A.Shetty for the Plaintiff.

Mr.Pankaj J. Das i/b R.S.Datar for the Defendant No.2.

...

CORAM: D.K.DESHMUKH, J.

DATED: 7TH AUGUST, 2006

P.C.:

The plaintiff is a bank which has filed a suit for recovery of the amount which was advanced by the plaintiff to the defendant no. 1 which was guranteed by the defendant no.2. Defendant No. 1 is served with the writ of summons, but, he does not appear. Defendant No. 2 appears. Therefore, this summons for judgment is directed against the defendant No.2.

2. Perusal of the reply submitted by the defendant No. 2 shows that he has raised two defences. First defence is that the letter of guarantee given by him is not a written contract, hence summary suit is not maintainable and the second defence is that the Plaintiff has not taken effective steps to recover the amount from the principal debtor.

3. Bare perusal of letter of guarantee shows that it amounts to a contract between the Plaintiff-Bank and the Defendant No.2 to guarantee to repay the loan advanced to the Defendant No.1. The Defendant No.2 as a guarantor is jointly and severally liable to the Plaintiff with the Defendant No.1.

4. Both the defences thus have no substance. Hence,

the Defendant No.2 is not entitled to leave to defend the suit.

5. In so far as the Defendant no. 1 is concerned, the Defendant no. 1 is not appearing though served with writ of summons. Therefore, in terms of the provisions of Order 37 of the CPC, plaintiff is entitled to judgment against the Defendant No. 1 also. Summons for judgment is, therefore, disposed of. Suit of the Plaintiff is decreed in terms of prayer Clauses (a) and (b). Refund of court fees as per rules.

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